

Curtis Crider/EAC/GOV

04/20/2007 11:46 AM

To Donetta L. Davidson/EAC/GOV@EAC, jhodgkins@eac.gov,  
Margaret Sims/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,

cc

bcc

Subject evaluation of contracting

History

☛ This message has been forwarded

To complete our evaluation of the contracting process and related issues for the voter fraud research and voter intimidation and voter identification research projects, we will need copies of all e-mails and a number of documents related to the projects including copies of all of the various drafts (versions) of the reports. I am requesting that all EAC personnel be notified that they are to preserve all of the documents including e-mails related to the projects. We are in the process of setting up an e-mail account to receive the documents, It is imperative that all documents related to the projects be preserved. As soon as the account is set up we will notify you of the address.

In addition, we are requesting access to the backup e-mail files maintained by GSA and EAC. As a result, we are requesting that no backup tapes or files be destroyed.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957



Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

015389

Curtis Crider/EAC/GOV  
04/23/2007 02:27 PM

To EAC Personnel  
cc  
bcc  
Subject documentation for evaluation

History:

✉ This message has been forwarded.

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

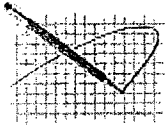
If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

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Office of Inspector General, Election Assistance Commission  
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015390



Curtis Crider/EAC/GOV

04/23/2007 02:33 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

A question has been raised on the e-mails.

Q. Are these emails among staff, to recipients outside the office, or both?

A. We would like ALL e-mails including those among staff and recipients outside of the office.

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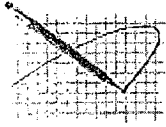
If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

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015391



Curtis Crider/EAC/GOV

04/23/2007 03:24 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter identification project. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding the project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov).

If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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015392

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc Gavin S. Gilmour/EAC/GOV@EAC  
bcc  
Subject Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>  
Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report.  
This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.  
I will discuss this further with each of you between now and tomorrow.  
I have been at the damn conference all day and have not been able to go to a single session or spend time with people.  
Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

015398

Rosemary E.  
Rodriguez/EAC/GOV  
03/30/2007 03:20 PM

To DDavidson@useac.gov, GHillman@useac.gov,  
CHunter@useac.gov  
cc TWilkey@useac.gov  
bcc  
Subject Fraud Report

I would very much like to explore the possibility of reconsidering the decision to release the Fraud Report.  
How can I get this on our agenda?

Rosemary E. Rodriguez  
Commissioner  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

015384

Gavin S. Gilmour/EAC/GOV  
04/20/2007 03:04 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV, Gracia Hillman/EAC/GOV@EAC,  
Caroline C. Hunter/EAC/GOV, Thomas R.  
cc Juliet E. Hodgkins/EAC/GOV

bcc

Subject Draft response to Tova Wang's lawyer

History:

✉ This message has been replied to and forwarded.

Pursuant to Commissioner Davidson's request, attached is the draft response to Tova Wang's lawyer.



Wang Ltr 17apr07.doc

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND  
SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

015395

**Deliberative Process  
Privilege**

**Attorney-Client  
Privilege**

April 17, 2007

James P. Joseph  
Arnold & Porter L.L.P.  
655 Twelfth Street, NW  
Washington, DC 20004-1206

Mr. Joseph:

This letter is in response to your April 16, 2007 inquiry in which you request that your client, Ms. Tova Wang, be authorized by the U.S. Election Assistance Commission (EAC) to discuss certain matters pertaining to her prior employment with the agency.

As I am sure you are aware, Ms. Wang was employed by the EAC under its authority to hire experts and consultants pursuant to 42 U.S.C. §3109 (as implemented by 5 C.F.R. §304). As such, her agreement with the EAC created a limited employee/employer relationship. This is clearly stated in her contract. As an employee Ms. Wang has a duty to the Commission. Without direction from the EAC, Ms. Wang has no authority to speak for the EAC, release non-public information or discuss privileged matters with third parties. As you note in your letter, this concept is also clearly stated in her employment contract. The duties and responsibilities that come with Federal service are essential to the proper functioning of our government.

Ultimately, however, Ms. Wang's responsibilities should not have a significant impact on her ability to discuss her personal opinions on voter fraud. Per her employment contract, the project she worked on was focused on collecting existing information, defining terms and proposing future research methodology so that EAC could conduct a future research project on voter fraud and intimidation. As a result, the information gathered by Ms. Wang and other EAC employees is nothing more than a collection of articles, books and opinions that are publicly available. In fact, the EAC has published much of this information as an attachment to the final report which is available on our Web site. Ms. Wang is free to provide her personal opinion on voter fraud to anyone she wishes. Her only limitation is in speaking for the EAC or releasing privileged documents or information.

If Ms. Wang has questions concerning specific requests for information, or is requested to speak

015396



on behalf of the EAC, she may contact her prior supervisor, Ms. Peggy Sims at [REDACTED]  
assistance.

Sincerely,

Gavin S. Gilmour  
Deputy General Counsel

015397

Attorney-Client  
Privilege

Thomas R. Wilkey/EAC/GOV  
05/11/2007 02:08 PM


To Rosemary E. Rodriguez/EAC/GOV@EAC

cc

bcc

Subject Re: Just sent u a fax 

History:

 This message has been replied to.

Got it....thanks

Gavin advises me that we are required to have a FOIA reading room and so we will do that but may not want to admit that we haven't up to now.

Thanks

Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
05/11/2007 01:26 PM

To "Tom Willkey" <TWilkey@eac.gov>

cc

Subject Just sent u a fax

015398

We have received your letter dated May 9, 2007, on behalf of your client, the Brennan Center for Justice ("Brennan Center"). We disagree with your client's perception that any EAC search of its records was unreasonable. While the Election Assistance Commission ("EAC") is a tiny agency and often struggles to meet the numerous requests it receives for agency documents, we take each request seriously and strive to be responsive. The EAC takes exception to the procedural, substantive and legal conclusions and representations made in your letter. We believe our search for records was conducted reasonably. Nevertheless, the EAC has decided that the best way to accommodate your request is to perform a new search for documents responsive to your request. We believe a new search will lay to rest your client's perception that our initial search was unreasonable.

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troubled over

The EAC has no desire to withhold information properly releasable under FOIA. Based upon the distribution of your letter, it is important for our agency to demonstrate its existing and continued policy of responsiveness by going beyond what is required and re-conducting the search that you allege was unreasonable. ✓ The EAC will essentially start over with regard to this request. As you know, Ms. Jeannie Layson has been in constant contact with Ms. Wendy Weiser of the Brennan Center during

See comments  
on next  
page.

Comment [s1]: Does "constant" accurately represent Jeannie's communication with Ms. Weiser?

015399

the pendency of its FOIA request. In fact, Ms. Layson recently contacted Ms. Weiser to inform her that that she had found additional responsive information in the course of EAC records reviews for similar requests for information. Additionally, Ms. Layson and Ms. Weiser were working together to provide any e-mail attachments or similar documents desired by the Brennan Center which were identified, but omitted in the original response. Due to the procedural and substantive confusion and disagreements surrounding this matter, we will terminate these piecemeal activities in order to prevent any future misunderstandings.

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The EAC will conduct a second search and review of its documents. We will not charge the Brennan Center for the document collection, review or copying. For the purpose of clarity and to avoid any confusion, based upon the Brennan Center's previous requests it is seeking:

ALSO, I believe this is a great opportunity to address the larger audience by including our desire (if it exists) to improve EAC transparency by setting up - in the very near future - a FOIA reading room. I implore you to turn this correspondence into a progressive step for the agency!

Rosemary Rodriguez

015400


Margaret Sims/EAC/GOV

04/03/2007 06:22 PM

To Jeannie Layson/EAC/GOV@EAC

cc jthompson@eac.gov, klynndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: Please review my responses 

Julie has already raised the point that most concerned me: I don't think it is accurate to say the consultant's recommendations were their findings. The recommendations were a combination of consultant recommendations and working group recommendations for future EAC action. We did not ask the consultants to provide "findings" because this research was never supposed to be the definitive study on the subject. Instead, it was supposed to be an initial effort to see what relevant information is available, to define voting fraud and voter intimidation, and to make recommendations to EAC regarding how to pursue the subject (next steps). --- Peggy

Jeannie Layson/EAC/GOV

04/03/2007 05:33 PM

To psims@eac.gov, jthompson@eac.gov, klynndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

cc

Subject Please review my responses

t

This are questions from a "freelance" reporter who is very hot about the "Tova Wang report." Please let me know if my answers are accurate, and I welcome any suggestions you may have. I need to get your input by COB tomorrow. I am also looking for more clarification on what didn't make it into the fraud report. She is asking if we included all of their "findings" and their "research."

Thanks.

1) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

015401

2) I understood you to say that the December EAC report includes all of the Wang/Serebrov recommendations but not all of the Wang/Serebrov findings. Is that correct? The report does include all of their recommendations, which were their findings, and all of the research they conducted.

3) I understood you to say that EAC staff added results of their own research to the December EAC report. Is that correct? What I said was EAC staff reviewed the report for accuracy, for grammar and added language that reflected the commission's decision to adopt the final version based upon the initial research provided by the consultants.

4) If I'm correct on questions 2 and 3, would it be accurate to say that readers of the December report cannot tell how much of that report does and does not reflect the original Wang/Serebrov findings? The consultants' recommendations are their findings. All of the recommendations are included in the final report, so readers can make the determination regarding the recommendations.

5) I called earlier today requesting the Wang/Serebrov report, and you sent me the December EAC report. I am concerned that if I had not already been researching this closely, I would have thought that you'd sent me the Wang/Serebrov report and would have reported incorrectly that you had. Does the EAC have any comment on this manner of replying to press inquiries? (I contacted you to request the report after I read in the Statesman Journal of Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission didn't widely release the consultants' review, but makes it available on request." Did the EAC indeed give Ms. Cocco a copy of the "consultants' review"? Or has she misunderstood you in the way I'm concerned about?) I sent you a link to the "EAC report" because it is what was adopted by the commission based upon the research conducted by the consultants. The final report clearly states how it was compiled and includes bios for both of the consultants. Regarding Ms. Cocco, I explained the entire process to her. I provided the staff update on the project which was presented at a public meeting in May 2006 and the final report, which is posted on the EAC website. Regarding "this manner of responding to press inquiries," I have forwarded your comments to my supervisor so he can review my performance regarding the handling of your inquiry.

6) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? As a small agency of 23 employees, including the four commissioners, it is necessary for the agency to contract with consultants to gather the initial data for research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project. For instance, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. In addition, we often ask for input from our Standards Board and Board of Advisors, which combined consist of more than 147 members. If we are using research that will eventually become guidance, we are required by HAVA to seek the input of these boards. Go here for more information about these boards and its members. If the board members have feedback, then we must make the determination whether to incorporate it, and, if so, how to incorporate their changes. If the research is focused on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the

process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015403

Juliet E. Hodgkins/EAC/GOV

04/03/2007 05:50 PM

To Jeannie Layson/EAC/GOV@EAC

cc Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
bcc

Subject Re: Please review my responses

With regard to # 3 we did add our own research, because theirs was insufficient on the definition of voting fraud and voter intimidation.

On #6, you might want to include is written in a consistent voice. This might seem elementary, but not in this case. The comments about the boards may be confusing, here, since this was not vetted through those boards.

I am comfortable with the idea that their recommendations were their findings, although I am sure that Tova would disagree. These consultant/employees were asked to provide two things: 1) a definition of the phrases "voting fraud" and "voter intimidation" and 2) recommendations on a research methodology to conduct a comprehensive review in this area. To accomplish this, we asked them to review existing information on voting fraud and voter intimidation. They wholly failed to provide a definition -- they provided a compilation -- a statement which would cover every possible connotation of those phrases. No logic or limitation was applied. A definition is by its very nature a limitation. So, we had to completely rework that -- hence the additional research referred to above. We reviewed state laws concerning voting fraud and voter intimidation to come up with a definition of "voting crimes." With regard to the second part of their charge, the consultants, as well as their working group and some of the interviewees, provided recommendations. All 16 of them were included in the final report. We did not adopt all of them, obviously, but we did adopt all or part of 6 of those recommendations.

Other statements that were contained in the report were just that ... statements, summaries, or opinions ... concerning the existing research that was out there on this topic. I would not classify those as "findings."

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV

04/03/2007 05:33 PM

To psims@eac.gov, jthompson@eac.gov,  
klyndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
cc

Subject Please review my responses

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Thanks.

015404



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015405

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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015406

Jeannie Layson/EAC/GOV  
04/03/2007 05:33 PM

To psims@eac.gov, jthompson@eac.gov,  
klynndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
cc

bcc

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015407

Regarding "this manner of responding to press inquiries," I have forwarded your comments to my supervisor so he can review my performance regarding the handling of your inquiry.

6) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? As a small agency of 23 employees, including the four commissioners, it is necessary for the agency to contract with consultants to gather the initial data for research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project. For instance, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. In addition, we often ask for input from our Standards Board and Board of Advisors, which combined consist of more than 147 members. If we are using research that will eventually become guidance, we are required by HAVA to seek the input of these boards. Go here for more information about these boards and its members. If the board members have feedback, then we must make the determination whether to incorporate it, and, if so, how to incorporate their changes. If the research is focused on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015408

## Where's the Voter Fraud?

Tova Andrea Wang, The Century Foundation, 12/4/2006

Over the past month, the silence has been deafening.

For the past few years, many on the Right have been vociferously propagating the myth that voter fraud at the polling place is a rampant problem of crisis proportions. But we haven't heard from them lately. In fact, as far as my research can discover (Nexis and Google news searches of multiple relevant terms), there has not been one confirmed report of any of these types of incidents in the 2006 election. Not one. Even the Republican National Committee's vote fraud watch operation in their list of complaints from the 2006 election could not come up with one such case.

If you've been listening to the likes of John Fund, Thor Hearne, Ken Mehlman, and John Lott, you would think non-citizens are lining up to vote at the polls, mischievous partisans are voting multiple times by impersonating other voters, and dead people are voting in polling places across the country. In order to justify their argument that we need all voters to present government issued photo identification at the polls, they claim that this type of fraud is the biggest problem our electoral system confronts. They have been building and building this argument, hammering and hammering away at it to the point that it has now become the prevailing belief of the American public.

I won't go into the recitation of all of the previous research that has been done on what a nonexistent problem polling place fraud is and the fraudulent disenfranchisement narrow voter identification requirements cause among perfectly eligible voters—disproportionately minorities, the poor, the elderly, and voters with disabilities (who by the way, according to conventional wisdom, are also all disproportionately Democratic voters). However, confronted with this continuously growing mountain of evidence undermining their case, it has been interesting to observe the evolution of the Right's spinning of this issue of late.

In recent months, even before this election, slowly recognizing the remarkable weakness of their substantive argument, conservatives' new tack has been to say that even if its true that there is not much polling place fraud, the simple fact that the American people *believe* it is occurring is a problem itself in that it is causing them to lose confidence in the election system. Well, no wonder they have the misguided belief that this is a problem—that's the message the Right has been hammering away at them over the last few years. In any case, the argument goes that we need identification requirements not because they will in actuality do anything to enhance the integrity of the voting process, but because we need to reassure people who have the perception the process is corrupt.

Let me provide just a few examples of this. In their answer in the identification litigation in Indiana, the state outright admitted that there had never been a single, solitary case of polling place fraud in the history of the state. Nevertheless, the state *argued*. A state may take action to avoid the appearance of fraud as well as its actual occurrence. A Rasmussen Report poll found that 58% of Americans believed that there was a lot or some fraud in American elections, and a Gallup poll after the 2000 election showed that 67% of adults nationally had only some or very little confidence in the way votes are cast and counted in our country. Public perceptions, grounded on publicly reported evidence of fraud such as

that identified above [by the people I mentioned earlier] are a further justification for fraud prevention requirements like Indiana's photo ID law.

During the argument over photo identification before the Supreme Court in Michigan, the assistant attorney general conceded there is no evidence of widespread voter fraud but rather "a concern about it." The esteemed Carter-Baker Commission wrote [http://www.brennancenter.org/stack\\_detail.asp?key=97&subkey=9857](http://www.brennancenter.org/stack_detail.asp?key=97&subkey=9857), "There is no evidence of extensive fraud in US elections or of multiple voting . . . but the electoral system cannot inspire confidence if no safeguards exist to deter or detect fraud or confirm the identity of voters. . . . The problem is not the magnitude of fraud . . . the perception of possible fraud contributes to low confidence in the system."

The Supreme Court may even be starting to buy into this rhetoric. In the recent *Purcell* case regarding Arizona's identification law, Justice Kennedy wrote, "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."

Georgia has twice passed voter identification requirements, in 1997 and 2005, basing the need for such barriers to the vote on instances of vote buying and absentee ballot fraud—two methods of voting that identification would do nothing about. More myths.

Basing voting rights laws upon purposely created misunderstandings of what the issues are is not a sound way to develop public policy. Rather than creating fake problems and then passing disenfranchising laws that purport to address them, we might do a better job of educating the American electorate as to what the real problems are in our voting system, and what they are not. It is only then that we will begin to address the flaws in the election systems that disenfranchise tens of thousands of voters in every major election.

*Toua Wang is a Democracy Fellow at The Century Foundation.*

The Century Foundation conducts public policy research and analyses of economic, social, and foreign policy issues, including inequality, retirement security, election reform, media studies, homeland security, and international affairs. The foundation produces books, reports, and other publications, convenes task forces, and working groups and operates eight informational Web sites. With offices in New York City and Washington, D.C., The Century Foundation is nonprofit and nonpartisan and was founded in 1919 by Edward A. Filene.

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**Deliberative Process  
Privilege**

March 15, 2007

Congressman Jose Serrano, Chairman  
House Appropriations Committee  
Subcommittee on Financial Services  
And General Government  
2227 Rayburn House Office Building  
Washington, DC 20515

**Via Hand Delivery**

RE: Documents requested during March 7, 2007 Hearing

Dear Chairman Serrano:

On March 7, 2007, the United States Election Assistance Commission (EAC) participated in a hearing on the issue of election integrity. During that hearing, Congressman Hinchey, a member of your subcommittee, requested that certain documents be provided to the Committee. We appreciate the Committee's interest in EAC's activities, and we are pleased to respond to the request. Congressman Hinchey requested three documents: EAC's assessment report on CIBER, Inc., the draft report submitted to EAC regarding voter fraud and intimidation, and the draft report submitted to EAC concerning voter identification. For your information, the assessment report on CIBER, Inc. and the final culmination of the voter fraud and intimidation research -- Election Crimes: An Initial Review and Recommendations for Further Study -- are available at [www.eac.gov](http://www.eac.gov). However, we have provided hard copies of these reports as well as the additional information requested.

**Assessment Report for CIBER, Inc.**

The first requested document was the report of EAC's contracted laboratory assessor concerning the assessment and review of CIBER, Inc. under EAC's Interim Laboratory Accreditation Program. It is important to explain the purpose and process of EAC's Interim Accreditation Program, which was put in place after the National Institute of Standards and Technology (NIST) informed EAC that it would not complete its lab assessments until late 2006 or early 2007.

**HAVA Accreditation Program Requirement.** As you know, the Help America Vote Act of 2002 (Section 231(a)(1)) mandates EAC "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." Additionally, the statute provides that laboratories are generally to be accredited in a two step process. First, NIST conducts an evaluation of independent non-Federal test laboratories. NIST selects those laboratories technically qualified to test voting systems to federal standards (2002 Voting System Standards and 2005 Voluntary

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Voting System Guidelines currently) and recommends them to EAC for accreditation. NIST has determined that it will utilize its preexisting National Voluntary Laboratory Accreditation Program (NVLAP) to perform its HAVA evaluation. Second, after receipt of NIST's recommendation, HAVA requires EAC issue a laboratory accreditation through a vote of its commissioners. As part of this process, EAC will conduct a review of its own to address non-technical issues such as conflict of interest, financial stability and recordkeeping.

HAVA required that NIST deliver its first set of recommended labs to the EAC "[n]ot later than 6 months after the Commission first adopts the voluntary voting system guidelines." This deadline passed in June 2006. Four laboratories applied to NIST for evaluation prior to the HAVA deadline, but the required technical reviews and on-site assessments were not completed by the deadline. The first set of NIST recommended laboratories were not received by the EAC until January 18, 2007.

**The Need for EAC Interim Accreditation of Laboratories.** Obviously, the need for EAC to provide accredited laboratories arose well before NIST's January 18 recommendation. First, towards the end of 2005 NIST informed the EAC that the expected timeline to complete required document collection and review, pre-assessment and formal on-site assessments of applicants made it highly unlikely that it would be able to provide a list of recommended laboratories before the end of 2006. This determination made it clear that the EAC would need to have an alternative process in place to provide accredited laboratories if it wished to implement its certification program before that time. Furthermore, in July of 2006, the National Association of State Election Directors (NASED) informed EAC that the organization was terminating its voting system qualification program. NASED is a non-governmental, private organization that accredited laboratories and qualified voting systems to federal standards for more than a decade. The organization's decision to terminate its voting system qualification program just before the 2006 general election required EAC to take immediate action. Without an entity to approve required voting system modifications for the 2006 election, some state election officials would be unable to field their HAVA-compliant systems. To address these situations, EAC was compelled to do two things (1) provide for interim accreditation of testing laboratories and (2) initiate a preliminary, pre-election phase of its voting system testing and certification program.<sup>1</sup>

<sup>1</sup> The pre-election phase of EAC's certification program was not originally planned, but was ultimately required to serve election officials and the public. The program began on July 24, 2006. The purpose of the pre-election phase of the program is to provide voting system manufacturers with a means to obtain a Federal Certification of voting system modifications during the vital period immediately prior to the November 2006 General Elections. Many states require a Federal or national certification as a condition of state certification. Historically, the three to four month period immediately preceding a General Election produces a number of emergent situations that require the prompt modification of voting systems. These changes are often required by state or local election officials and must be made prior to Election Day. To this end, the pre-election phase of the EAC's Certification Program is designed to meet the immediate needs of election officials from the date NASED terminates its qualification program until after the November General Election. The pre-election requirements of the certification program are narrowly tailored to meet these needs. Additionally, the pre-election phase of the program was drastically limited in

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EAC needed to provide accredited labs on a temporary, interim basis to ensure that the agency had the means to implement its certification program. Additionally, EAC would be compelled to implement a provisional, pre-election certification program to replace services offered by NASED. EAC could not wait for NIST to recommend laboratories. Fortunately, HAVA provided a mechanism for EAC to take such action in Section 231(b)(2)(B). This section requires that EAC publish an explanation when accrediting a laboratory without a NIST recommendation. A notice was published on EAC's Web site to satisfy this requirement.

**EAC's Interim Accreditation Program.** At a public meeting in August 2005 held in Denver, the commissioners received a staff recommendation outlining the details of the interim accreditation program. The staff recommendation included a process in which the three laboratories previously accredited by NASED – CIBER, SysTest Labs, and Wyle Laboratories – would be allowed to apply for interim accreditation. In December of 2005, EAC officially began accepting applications for a limited interim accreditation program. As stated in the letters, the purpose of the interim accreditation program was to provide accredited laboratories to test voting systems to federal standards, until such time as NIST/NVLAP was able to present its first set of recommended laboratories. This accreditation was limited in scope to the 2002 Voluntary Voting System Standards and required the laboratory to apply to the NVLAP program to receive a permanent accreditation. The letters also sought variety of administrative information from the laboratories and required them to sign a Certification of Laboratory Conditions and Practices. This certification required the laboratories to affirm, under penalty of law, information regarding laboratory personnel, conflict of interest policies, recordkeeping, financial stability, technical capabilities, contractors, and material changes.

In order to accredit a laboratory (even on an interim basis), EAC needed to contract with a competent technical expert to serve as a laboratory assessor. EAC sought a qualified assessor with real-world experience in the testing of voting systems. Ultimately, only one individual responded to EAC's solicitation. The individual was (at the time) the only individual known to have the requisite experience and assessor qualifications. The contractor reviewed each of the laboratories that applied. The review was performed in accordance with international standards, the same standards used by NVLAP and other laboratory accreditation bodies. This standard is known as International Standard ISO/IEC 17025, *General Requirements for the Competence of Testing and Calibration Laboratories*. In addition, the EAC assessor (who also currently serves as a NVLAP assessor) applied NIST Handbooks 150, *Procedures and General Requirements* and NIST Handbook 150-22, *Voting System Testing*.

CIBER, SysTest Labs, and Wyle Laboratories applied for accreditation under the interim program. Each, as required, had previously received a NASED accreditation. EAC's

scope, (1) it did not certify voting systems, just modifications and (2) the certification was provisional and, thus, expired.

when?

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assessor visited each of the labs and conducted a review consistent with the standards noted above. The assessor reviewed laboratory policies, procedures and capabilities to determine if the laboratories could perform the work required. Laboratory assessments do not make conclusions regarding past laboratory work product. Two of the applicant laboratories, SysTest Laboratories, L.L.C., and Wyle Laboratories, Inc. received an interim accreditation. The assessor's reports and EAC action regarding these laboratories are available on the EAC Web site.<sup>2</sup> EAC promptly published on its Web site information regarding its decision on accreditation (August and September of 2006). This notice provides some brief background on the interim accreditation process, starting with the fact that three previously NASED accredited laboratories were invited to apply to the program, including information on the program's requirements and limitations and ending with the identity and contact information of the two laboratories accredited. Information was also electronically forwarded to EAC's list of stakeholders via e-mail. The EAC stakeholders e-mail list includes almost 900 election officials and interest groups, nationwide. Staff members for EAC oversight and appropriations committees are included in this list of stakeholders. In addition to EAC's Web site and e-mail announcements, on September 21, 2006 EAC's Executive Director reiterated the Commission's decision at a public meeting Web cast to the EAC Web site. This announcement identified the interim accredited labs by name. Furthermore, in October 26, 2006, the two interim accredited laboratories testified at a nationally televised public hearing.

**The Interim Accreditation Program and CIBER.** The third laboratory, CIBER, has yet to satisfy the requirements of the interim accreditation program. The initial assessment of CIBER revealed a number of management, procedural and policy deficiencies that required remedial action before the laboratory could be considered for accreditation. These deficiencies are identified in the initial CIBER/Wyle report. They were also brought to the attention of CIBER's President of Federal Solutions in a letter from EAC's Executive Director dated September 15, 2006. The letter outlines, consistent with recommendation of EAC's assessor, the steps the laboratory must take to achieve compliance. The letter requires CIBER to:

- a. *Assign resources, adopt policies and implement systems for developing standardized tests to be used in evaluating the functionality of voting systems and voting system software. Neither ITA Practices, CIBER nor any of its partners will be permitted to rely on test plans suggested by a voting system manufacturer.*
- b. *Assign resources, adopt policies and implement systems for quality review and control of all tests performed on voting systems and the report of results from those tests. This shall include provisions to assure that all*

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<sup>2</sup> Note: The Wyle and CIBER assessment was completed as a joint report. The two labs have a cooperative agreement to work together in test voting systems (Wyle performing hardware testing and CIBER software testing).

*required tests have been performed by ITA Practices, CIBER or its accredited partner lab.*

Finally, the letter required an additional "follow-up" assessment of the laboratory.

The follow-up assessment of CIBER was performed by EAC's assessor in December of 2006. The findings of this assessment were documented in a report, which is available on the EAC Web site. In the findings, the assessor recognized significant changes CIBER had made to its program in response to the initial assessment, including new policies regarding test procedures, management and personnel. The report also noted a number of non-conformities that had yet to be addressed by the laboratory.

*2*  
*check*  
*over*  
In a letter dated January 3, 2007, CIBER provided a written response to EAC's follow-up assessment and report. The response sought to address the deficiencies noted in the December assessment. Additionally, CIBER officials requested to meet with EAC staff to discuss their January 3 response. This meeting took place at EAC on January 10, 2007. At the meeting, EAC staff informed CIBER that their report could not serve as the basis of accreditation because it failed to resolve all outstanding issues. A number of CIBER responses to noted deficiencies were listed as "TBD." EAC's assessor and Certification Program Director formally reviewed CIBER's response. EAC provided CIBER notice of the deficiencies that remained outstanding and informed them of the steps they must take to come into compliance by a letter dated February 1, 2007. Due to the fact that the purpose and usefulness of the interim accreditation program is coming to a close, EAC allowed CIBER 30 days in which to document their full compliance. After this time, the program will be closed and no further assessment actions will be performed under the interim program. CIBER was notified of this procedure by letter dated January 26, 2007, and on February 8, 2007, EAC voted to close its interim laboratory accreditation program effective March 5, 2007. *WMD*

Information related to CIBER's status in the EAC interim accreditation program was not released prior to January 26, 2007. It was EAC's belief, in consultation with NIST, that it would be improper to release information regarding an incomplete assessment. However, on January 25, 2007, CIBER took the affirmative action of making this information available to a third party, the New York State Board of Elections. With this action, CIBER made the information public and EAC believed it was incumbent to provide this information to the public. As such, on January 26, 2007, EAC posted on its Web site assessment reports, correspondence, and responses from CIBER related to their progress in the EAC interim accreditation program.

Copies of the two reports issued by the EAC assessor concerning CIBER's laboratory accreditation assessments are attached as Appendixes 1 and 2 to this letter.

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### **Draft Voter Fraud and Voter Intimidation Report**

The second document requested by Congressman Hinchey was the draft report prepared by Job Serebrov and Tova Wang as contracted employees to the EAC. This document was produced by contract employees of the EAC for the EAC. Thus, this draft report was and is considered predecisional under the deliberative process exemption to the Freedom of Information Act (FOIA).

As you may know, the Deliberative Process Privilege protects intra-agency documents that are (1) pre-decisional in nature and (2) part of the deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and contractors ("consultants") constitute intra-agency documents.<sup>3</sup> This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.<sup>4</sup> The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.<sup>5</sup> Ultimately, deliberative documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors, (2) to protect against premature disclosure of proposed policies and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.<sup>6</sup>

The report requested by Congressman Hinchey is a draft, representing one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by contract employees in order to aid the EAC's Commissioners in their decisions regarding voting fraud and voter intimidation. The contract employees had no personal interest in their submissions and had no agency decision-making authority. Each was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when the report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The determination of this document as predecisional is born out in the facts surrounding the project at issue, including the contract documents that gave rise to research and writing of this draft report. First, the voter fraud and intimidation study that

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<sup>3</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

<sup>4</sup> Klamath, at 10.

<sup>5</sup> Hoover, 611 F.2d at 1138.

<sup>6</sup> NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

was requested is a draft of a final document that has already been released after being vetted by staff and approved by the EAC Commissioners. It is available in its final form on EAC's Web site, [www.eac.gov](http://www.eac.gov). The draft document at issue was created by two contract employees hired pursuant to 5 U.S.C. §3109 (see 42 U.S.C. §15324(b)). Individuals hired under this authority enter into an employment relationship with the EAC. The contract employees were supervised by an EAC program director who participated directly in the project. For example, the supervisor approved, facilitated, scheduled and participated in interviews conducted for the project. Further, the contract employees were provided research materials and other support from EAC law clerks and staff. As stated by their contracts, these consultants were hired so that the EAC could "...obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation." Moreover, the contracts clearly forbid the consultants from releasing the draft they created consistent with the privilege covering the draft report. The contract states

All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

Finally, the purpose or subject of the draft report at issue was to make an EAC determination on how voter fraud should be studied by the agency. This was to be done by (1) assessing the nature and quality of the information that presently exists on the subject matter, (2) defining the terms and scope of EAC study as proposed by HAVA, (3) determining what is to be studied and (4) determining how it is to be studied. In addition, the Consultants were asked to develop a definition of the phrases "voting fraud" and "voter intimidation."

EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voter fraud and intimidation report provided by Ms. Wang and Mr. Serebrov. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and allegations that showed bias. EAC staff edited the draft report to correct the problems mentioned above and included all of the consultants' and working groups' recommendations. The final report was adopted by EAC on December 7, 2007 during its public meeting. The final report as well as all of

the underlying research conducted by Mr. Serebrov and Ms. Wang are available on EAC's Web site, [www.eac.gov](http://www.eac.gov).

EAC understands and appreciates that the a request from a Congressional committee is exempt from the provisions of FOIA, and as such, EAC is providing this draft document despite the fact that the deliberative process exemption clearly applies to its contents. The draft report has been attached as Appendix 3 to this letter.

**Draft Voter Identification Report**

The third document requested is the draft report prepared by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. This draft report, like the draft voter fraud and voter intimidation report, is predecisional under the deliberative process exemption to FOIA.

With regard to the Voter Identification draft report, it was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voting identification procedures." The stated objective of the contract was to:

...obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action. EAC has not completed review and vetting of this document. However, initial review of this document reveals data and analysis that causes EAC concern. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turn out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists

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and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>7</sup> After this review process is completed, EAC will make a decision whether to adopt or reject the draft report.

Again, recognizing that a request from a Congressional committee is exempt from the provisions of FOIA, EAC is providing this draft document despite the fact that the deliberative process exemption clearly applies to its contents. The draft report has been attached as Appendix 4 to this letter.

Thank you for your requests and your interest in election administration. If you have further questions, please do not hesitate to contact me.

Sincerely,

Donetta Davidson  
Chair

cc: Congressman Maurice Hinchey (letter only)

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<sup>7</sup> See EAC Public Testimony, February 8, 2007, page 109.

**Deliberative Process  
Privilege**

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>  
bcc

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

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**Deliberative Process  
Privilege**

**Attorney-Client  
Privilege**

Thomas R. Wilkey/EAC/GOV  
04/20/2007 12:13 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Re: Fraud Report

I discussed this with Julie last evening and again this morning and agree with her comments.  
I believe both the IG review and our responses to Senator Finesteins letter covers a great deal of what we  
were asking them to do.

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/20/2007 12:14 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey; Margaret Sims; Jeannie Layson  
**Cc:** Gavin Gilmour  
**Subject:** Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth

015421

overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

015422

Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV  
04/20/2007 08:21 AM

To Juliet E. Hodgkins/EAC/GOV  
cc  
bcc  
Subject Re: Fw: Fraud Report

Sure thing... not sure I fully understand the ultimate goal concerning the document.

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

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This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.  
I will discuss this further with each of you between now and tomorrow.  
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Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

015423

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV

04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM —

Thomas R. Wilkey/EAC/GOV

04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report. This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way. I will discuss this further with each of you between now and tomorrow. I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

015424

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 08:17 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Fraud Report

My understanding is that Jeannie requested that Peggy provide a complete recitation of what happened and then Gracia said that I should do the same.

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 08:21 AM EDT  
**To:** Juliet Hodgkins  
**Subject:** Re: Fw: Fraud Report

Sure thing... not sure I fully understand the ultimate goal concerning the document.

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

015425

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

015426

Attorney-Client  
Privilege

Thomas R. Wilkey/EAC/GOV  
04/20/2007 12:13 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Re: Fraud Report

I discussed this with Julie last evening and again this morning and agree with her comments.  
I believe both the IG review and our responses to Senator Finesteins letter covers a great deal of what we were asking them to do.

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/20/2007 12:14 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey; Margaret Sims; Jeannie Layson  
**Cc:** Gavin Gilmour  
**Subject:** Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth

015427

overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

015428



Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV  
04/20/2007 08:21 AM

To Juliet E. Hodgkins/EAC/GOV  
cc  
bcc  
Subject Re: Fw: Fraud Report

History: This message has been replied to.

Sure thing... not sure I fully understand the ultimate goal concerning the document.

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report.  
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I have been at the damn conference all day and have not been able to go to a single session or spend time with people.  
Thanks  
Tom


015429

Sent from my BlackBerry Wireless Handheld

015430

Attorney-Client  
Privilege

Thomas R. Wilkey/EAC/GOV  
04/19/2007 07:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fraud Report 

Ok

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/19/2007 07:53 PM EDT  
**To:** Thomas Wilkey  
**Subject:** Re: Fraud Report

I understand. However, this is less of a request and more of a demand. Sorry, but we need to talk about a few things before tomorrow.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 07:51 PM EDT  
**To:** Juliet Hodgkins  
**Subject:** Re: Fraud Report

Ok if I can still talk..mi had to put hope with these three for the entire day

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/19/2007 07:50 PM EDT  
**To:** Thomas Wilkey  
**Subject:** Re: Fraud Report

Please call me at home after your dinner. 

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report.  
This would include all of the details of your work on the both the draft report and the final report adopted

015431

by the Commissioners, Jeannie has offered to help you in any way.  
I will discuss this further with each of you between now and tomorrow.  
I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom


---

Sent from my BlackBerry Wireless Handheld

015432

Attorney-Client  
Privilege

Juliet E.  
Thompson/EAC/GOV  
11/02/2005 04:26 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Question 

Perhaps they could simply submit a supporting statement with the number of hours that they worked.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV  
11/02/2005 01:14 PM

To Juliet E. Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc  
Subject Fw: Question

Julie,

FYI (see below)

I am thinking that Job and Tova will have to resubmit their invoice (maybe we should call them time sheets) and include a summary of their hours worked.

Your thoughts.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Gavin S. Gilmour/EAC/GOV on 11/02/2005 01:12 PM -----



"Job Serebroy"

11/02/2005 01:07 PM

To ggilmour@eac.gov  
cc wang@tcf.org  
Subject Re: Question

Gavin:

015433

When do you think everything will be finalized and did you find out how long it will take to get paid for the Oct 25 invoice?

By the way, I think you and Julie gave me your colds.

Job

--- ggilmour@eac.gov wrote:

> Job,  
>  
> Per GSA Finance, the Federal Government does not  
> have tax liability on  
> Personal Services Contracts. You will be issued a  
> 1099 and be responsible  
> for paying the required taxes.  
>  
>  
> Gavin S. Gilmour  
> Associate General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

015434

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV

04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Fw: Fraud Report

Commissioners & Tom,

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Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV

04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

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Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

015435

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

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Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

015436





"Job Serebrov"

11/02/2005 02:07 PM

To ggilmour@eac.gov

cc wang@tcf.org

bcc

Subject Re: Question

History:

☞ This message has been forwarded.

Gavin:

When do you think everything will be finalized and did you find out how long it will take to get paid for the Oct 25 invoice?

By the way, I think you and Julie gave me your colds.

Job

--- ggilmour@eac.gov wrote:

> Job,  
>  
> Per GSA Finance, the Federal Government does not  
> have tax liability on  
> Personal Services Contracts. You will be issued a  
> 1099 and be responsible  
> for paying the required taxes.  
>  
>  
> Gavin S. Gilmoir  
> Associate General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

015437

Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV  
11/02/2005 01:52 PM

To [REDACTED]  
cc  
bcc  
Subject Question


Job,

Per GSA Finance, the Federal Government does not have tax liability on Personal Services Contracts. You will be issued a 1099 and be responsible for paying the required taxes.

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

015438

Gavin S. Gilmour/EAC/GOV  
11/17/2006 04:51 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft Voting Fraud and Voter Intimidation Report 

Looks good...

I have some comments... (hand written) we can discuss upon your return..

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 01:40 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC  
Subject Draft Voting Fraud and Voter Intimidation Report

Commissioners and Tom,

I have attached a draft version of the EAC Voting Fraud and Voter Intimidation report. **Please have your comments ready no later than Tuesday , Nov. 28, COB, so that I will be prepared to discuss them at our briefing on Wednesday , Nov. 29 at 10:30.**

You will note that there are appendixes referenced in the report. These documents are quite lengthy. Thus, I did not attach them to this email. If, however, you want to read the documents, DeAnna has access to them in my absence and can either email them to you or print them for you.

I think that the report is fairly self-explanatory. However, there are two questions that we need to address and that the Commissioners need to comment on:

1. The consultants provided summaries of articles, books, and reports that they read, as well as summaries of the interviews that they conducted. Peggy created two tables summarizing the consultants' summaries of books, article and reports as well as interviews. We need to make a determination of which summaries we want to attach as appendixes. The only issue that I am aware of (and I have a question pending to Peggy about the quality of these summaries) is a significant disagreement over the summaries

015439

of interviews with Craig Donsanto and John Tanner of the Dept. of Justice. They disagree with the characterization given by the consultants to what they said in the interview. Obviously, this matter would have to be resolved if we decide to use the consultants' summaries.

2. Tom and I had a conversation with Tova and Job about the fact that we are going to issue a report. Tova was quite insistent about being able to see the report before it is released. I am NOT inclined to give her a copy of the report before it is released. Neither Tova nor Job are still on contract with the EAC. Thus, they are just like any other member of the public. I believe that if we release it to them, then we may have a significant problem withholding the document from others that may ask for it via FOIA request. I believe that the course of action should be to release it to all persons simultaneously.

Happy reading and Happy Thanksgiving!



Voter Fraud & Intimidation Report.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

015440

Gavin S. Gilmour/EAC/GOV  
04/11/2007 11:52 AM

To Jeannie Layson/EAC/GOV, Juliet E.  
Hodgkins/EAC/GOV@EAC  
cc  
bcc

Subject An unsolicited thought/statement

*The stated purpose of the EAC's recently released "fraud report" was not to draw conclusions about fraud, but determine how the subject should be studied by the EAC. As such, it would inappropriate for the EAC to make unsupported conclusions regarding fraud in its preliminary report. Such speculative statements would only serve to compromise its future effort to study this matter in an nonpartisan fashion.*

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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015441

# **Comm. DeGregorio Files**

015442



October 24, 2006

Gerald A Reynolds  
Chairman, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, NW  
Washington, DC 20425

**Via Facsimile Transmission ONLY**  
**202-376-7672**

RE: October 19, 2006 Letter

Dear Mr. Reynolds:

Your letter of October 19, 2006 requests the status on the EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study. Thank you for your letter.

Sincerely,

Paul S. DeGregorio  
Chairman

015443



## UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

October 19, 2006

The Honorable Paul S. DeGregorio  
Chairman  
United States Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005

Dear Chairman DeGregorio:

On behalf of the U.S. Commission on Civil Rights, I write to inquire about the status of a report on voter fraud allegedly produced by the Election Assistance Commission. The U.S. Commission on Civil Rights held a briefing on October 13, 2006 on voter fraud and voter intimidation. During this briefing, a panelist cited media reports that the Election Assistance Commission had produced a report on voter fraud but had not yet released it to the public. It would be useful to know the status of this report as Election Day approaches. Any information provided by the Election Assistance Commission would be of great value to all voters seeking to effectively exercise their right to vote.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Gerald A. Reynolds".

GERALD A. REYNOLDS  
Chairman

015444



**RUSH HOLT**  
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## Congress of the United States

October 16, 2006

Committee on Education  
and the Workforce

Permanent Select Committee  
on Intelligence  
Ranking Member  
Subcommittee on Intelligence Policy

Co-Chair  
Children's Environmental Health Caucus  
Member  
Congressional Arts Caucus  
Internet Caucus  
Law Enforcement Caucus  
Historic Preservation Caucus

The Honorable Paul DeGregorio  
Chairman  
U.S. Election Assistance Commission  
1225 New York Avenue NW, Suite 1100  
Washington, D.C. 20005-6156

Dear Chairman DeGregorio:

I am writing to express my concern about the fact that the Election Assistance Commission (EAC), in accordance with the statutory mandate that it do so, engaged consultants to study the issues of voting fraud and voter intimidation, but has failed to release to the public the results of that study.

Pursuant to Section 241 of the Help America Vote Act (HAVA), the EAC is required to "conduct and make available to the public studies regarding . . . [n]ationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office" and "[i]dentifying, deterring, and investigating methods of voter intimidation." Last week, USA Today reported that it had obtained a report from the EAC on those subjects "four months after it was delivered by two consultants hired to write it. The commission has not distributed it publicly." Enclosed is a copy of the May 17, 2006 "Status Report on the Voting Fraud-Voter Intimidation Research Project" obtained by USA Today. The report found that "[o]n balance, more researchers find [polling place fraud] to be less of a problem than is commonly described in the political debate," and that "[t]here is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens," and are left to refer to anecdotal accounts. At the same time, the report found that "[d]eceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004" and that "[v]oter intimidation continues to be focused on minority communities."

As you know, the Committee on House Administration conducted a hearing in June in the subject of non-citizen voting and a bill offered by Representative Hyde to require all voters to present government-issued photo identification before voting. Although the EAC was in possession of the enclosed report at that time, the report was not released, and therefore did not inform the proceedings. Subsequently, on September 20, the Hyde bill was reported to the floor of the House for debate and a vote. Again, the EAC was in possession of a report which was directly on the topic and reached conclusions in

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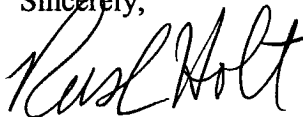
opposition to the assumptions upon which the bill was based, yet the EAC again chose not release it. Had Members been in possession of the report and informed of its conclusions, the relatively close vote on that measure might have come out otherwise.

This is deeply troubling. Under HAVA, the EAC is charged with the responsibility of serving as "a national clearinghouse and resource for the compilation of information," including information gathered in the course of conducting the studies mandated by Section 241. I would like to know, therefore, upon what grounds the EAC withheld that report when it was most needed to inform discussion and debate.

I ask the EAC to publish the full report immediately, with explanation or minority views, if appropriate.

Thank you for your consideration of this important matter. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Rush Holt". The signature is fluid and cursive, with the first name "Rush" and last name "Holt" clearly distinguishable.

RUSH HOLT  
Member of Congress

RH/mpm

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

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## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

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## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

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- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

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although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

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- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

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- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

### NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

#### **Absentee Ballots**

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

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## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

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- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio, and Pennsylvania.

#### **"Dead Voters and Multiple Voting"**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

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As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

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instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

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**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

***EAC Invited Technical Advisor:***

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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## UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

**FACSIMILE COVER SHEET**

DATE:

10-19-06

TO:

U.S. ELECTION ASSISTANCE COMMISSION

ATTN: CHAIRMAN PAUL DE GREGGIO

FROM:

OFFICE OF THE STAFF DIRECTOR

COMMENTS:

NUMBER OF PAGES INCLUDING COVER PAGE:

PERSON TO CONTACT IF PROBLEM:

OFFICE OF THE STAFF DIRECTOR  
(202) 376-7700  
FACSIMILE NO.: (202) 376-7672

015459



UNITED STATES COMMISSION ON CIVIL RIGHTS  
WASHINGTON, D.C. 20435

OFFICE OF STAFF DIRECTOR

# FACSIMILE COVER SHEET

DATE:

10-19-06

TO:

U.S. ELECTION ASSISTANCE COMMISSION

ATTN: CHAIRMAN PAUL DE GREGGIO

FROM:

OFFICE OF THE STAFF DIRECTOR

COMMENTS:

NUMBER OF PAGES INCLUDING COVER PAGE:

PERSON TO CONTACT IF PROBLEM:

OFFICE OF THE STAFF DIRECTOR  
(202) 376-7700  
FACSIMILE NO.: (202) 376-7672

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## UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

October 19, 2006

The Honorable Paul S. DeGregorio  
Chairman  
United States Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005

Dear Chairman DeGregorio:

On behalf of the U.S. Commission on Civil Rights, I write to inquire about the status of a report on voter fraud allegedly produced by the Election Assistance Commission. The U.S. Commission on Civil Rights held a briefing on October 13, 2006 on voter fraud and voter intimidation. During this briefing, a panelist cited media reports that the Election Assistance Commission had produced a report on voter fraud but had not yet released it to the public. It would be useful to know the status of this report as Election Day approaches. Any information provided by the Election Assistance Commission would be of great value to all voters seeking to effectively exercise their right to vote.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald A. Reynolds".

GERALD A. REYNOLDS  
Chairman

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UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

[www.usccr.gov](http://www.usccr.gov)

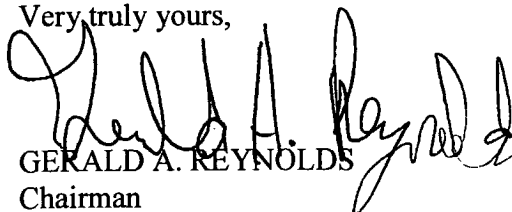
October 19, 2006

The Honorable Paul S. DeGregorio  
Chairman  
United States Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005

Dear Chairman DeGregorio:

On behalf of the U.S. Commission on Civil Rights, I write to inquire about the status of a report on voter fraud allegedly produced by the Election Assistance Commission. The U.S. Commission on Civil Rights held a briefing on October 13, 2006 on voter fraud and voter intimidation. During this briefing, a panelist cited media reports that the Election Assistance Commission had produced a report on voter fraud but had not yet released it to the public. It would be useful to know the status of this report as Election Day approaches. Any information provided by the Election Assistance Commission would be of great value to all voters seeking to effectively exercise their right to vote.

Very truly yours,

  
GERALD A. REYNOLDS  
Chairman

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 24, 2006

Gerald A Reynolds  
Chairman, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, NW  
Washington, DC 20425

**Via Facsimile Transmission ONLY**  
**202-376-7672**

RE: October 19, 2006 Letter

Dear Mr. Reynolds:

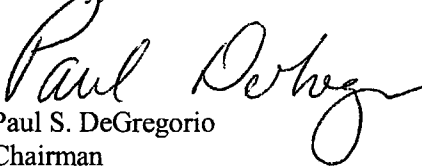
Your letter of October 19, 2006 requests the status on the EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study. Thank you for your letter.

Sincerely,

  
Paul S. DeGregorio  
Chairman

015463

DRAFT – PREDECISIONAL – NOT FOR DISTRIBUTION

October 18, 2006

Honorable Rush Holt  
1019 Longworth Building  
Washington, DC 20515

**Via Facsimile Transmission ONLY**  
**202-225-6025**

RE: October 16, 2006 Letter

Dear Congressman Holt:

Your letter of October 16, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio, Chairman

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**FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

**Report to the**  
**U. S. Election Assistance Commission**  
**On**  
**Best Practices to Improve Voter Identification Requirements**  
**Pursuant to the**  
**HELP AMERICA VOTE ACT OF 2002**  
**Public Law 107-252**

May 16, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University

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## FINAL DRAFT

For Review by the Standards Board and Board of Advisors

### The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

### Project Management Team

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## **FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

### **Peer Review Group**

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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## **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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### **Report Background**

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.


This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

### **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

#### Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

  
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**For review by the EAC's Advisory Boards**

- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

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Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:<sup>1</sup> the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.<sup>2</sup> Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.<sup>3</sup> As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

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<sup>1</sup> See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

<sup>2</sup> The EAC has contracted with other researchers to study vote fraud issues.

<sup>3</sup> Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*.

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voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.<sup>4</sup> The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

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<sup>4</sup> Even the most relaxed provisions for identification at the polls—anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

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It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

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significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

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example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>5</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

**Recommendations for consideration and action by the EAC**

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

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<sup>5</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

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or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
  - I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
  - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

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the convenience of the voter, the total time allowed to evaluate ballots<sup>6</sup>, and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends.

Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

*What about  
Indiana  
case?*

## **SUMMARY OF RESEARCH**

### **Background and Approach of the Study**

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

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<sup>6</sup> Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997); concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.
- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.
- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

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- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

**Voter ID requirements on Election Day**

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>7</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>8</sup>

<sup>7</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

<sup>8</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

*Carter-Baker  
only  
Comments*

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We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>9</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

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<sup>9</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>10</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>11</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>12</sup>

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<sup>10</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>11</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

<sup>12</sup> "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . . ." *Harvard Law Review* 127:1144 (2006)

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2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>13</sup>
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>14</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>15</sup> A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>16</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

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<sup>13</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>14</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>15</sup> "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

<sup>16</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

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intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

**Voter ID and Turnout**

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>17</sup> Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.<sup>18</sup>

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

<sup>17</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

<sup>18</sup> As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

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identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.<sup>19</sup> Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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<sup>19</sup> One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

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**TABLE 1 – Voter ID Requirements<sup>20</sup>**

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID <sup>1</sup>	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID <sup>2</sup>	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID <sup>AA</sup>	Photo ID	Photo ID <sup>AA</sup>	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID <sup>A</sup>	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID <sup>4</sup>	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

<sup>20</sup> See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.



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South Carolina	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>aa</sup>	Address & Registration
South Dakota	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>aa</sup>	Affidavit
Tennessee	Provide ID	Provide ID <sup>c</sup>	Provide ID	Affidavit
Texas	Provide ID	Provide ID <sup>b</sup>	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

\* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

<sup>1</sup> Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

<sup>2</sup> Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

<sup>3</sup> Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

<sup>4</sup> Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

<sup>5</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>6</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>7</sup> Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

<sup>8</sup> Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

### Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

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**Findings of the statistical analysis**

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
Average Turnout (All States)	60.9 %		

**This table displays the mean turnout using the aggregate county level data for each state in 2004.**

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

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emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.<sup>21</sup>

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American<sup>22</sup>
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

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<sup>21</sup> The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

<sup>22</sup> The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

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The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.<sup>23</sup>

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

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<sup>23</sup> This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.